

THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.9247 of 2005

Dated the 31st day of August, 2005

Between:

Smt. C. Sivamma, w/o.Devaraj,
Age 30 years, Occ: F.P.Shop dealer,
Pedda Bandanawada village,
Gudipalli Mandal, Chittoor District.

.... **Petitioner**

and

The Commissioner of Civil Supplies/
Incharge of Director of Civil Supplies,
Government of A.P., Hyderabad.

And three others **Respondents**

ORDER:

This writ petition is filed seeking a declaration that the order of the second respondent-Joint Collector, Chittoor, dated 25-05-2004, as confirmed by the first respondent-Commissioner of Civil Supplies, Hyderabad, as arbitrary and illegal.

The writ petitioner is the fair price shop dealer of Pedda Bandanawada Village, situated at Gudipalle Mandal, Chittoor District. The second respondent, vide proceedings dated

25-05-2004 bifurcated the said fair price shop and created a new shop at Kammaguttapalle Village. It appears that the fair price shop at Pedda Bandanawada Village was having 311 cards. While so, on a request made by the fourth respondent-Lakshmi Mahila Sangam, represented by its group leader

Smt. K. Sundaramma stating that they have to travel more than two kilometers to draw their essential commodities and therefore, it is necessary to create a new shop, the existing fair price shop at Pedda Bandanawada village has been bifurcated, thereby allotting 124 cards to the existing Pedda Bandanawada Village and 187 cards to Kammaguttapalle Village. It is not in dispute that the said order has not yet been implemented, and no dealer has been appointed so far for the newly created fair price shop at Kammaguttapalle Village.

The writ petitioner, who is the dealer of the existing shop, aggrieved by the order of the second respondent dated 25-05-2004, preferred an appeal before the first respondent. Having entertained the said appeal, the first respondent by order dated 22-07-2004 granted stay of all further proceedings. Subsequently, it appears that the fourth respondent-Lakshmi Mahila Sangham got itself impleaded to the appeal and also filed a petition to vacate the order of stay, dated 22-07-2004.

In pursuance thereof, the first respondent has taken up the appeal for hearing and notices were issued to both the parties. However, the appellant (the writ petitioner) failed to appear and consequently the first respondent/appellate authority having recorded the absence of the counsel for the appellant dismissed the appeal. Questioning the said order dated 31-03-2005, the present writ petition has been filed. This Court while admitting the writ petition by order dated 27-04-2005 granted interim stay of all further proceedings in furtherance of the order of bifurcation dated 25-05-2004. Now, the fourth respondent-Lakshmi Mahila Sangham filed a petition to vacate the stay. When the said vacate petition has come up for consideration, with the consent of both the parties the main writ petition itself is heard.

A perusal of the impugned order dated 31-03-2005 makes it clear that the said order was passed on the ground that the learned counsel appearing for the petitioner failed to appear before the first respondent. The learned counsel for the fourth respondent submits that in spite of service of notice of hearing, the learned counsel for the appellant failed to appear and therefore, the first respondent has rightly passed the impugned order. He also submits that the said order is in accordance with the settled principles of law and therefore, does not warrant any interference.

On the other hand, the learned counsel for the writ petitioner submits that the petitioner cannot be made to suffer for the default of the counsel. He submits that the

petitioner was not aware of the date of hearing of the appeal and since admittedly the appeal was disposed of without hearing the petitioner, the matter requires re-consideration.

Admittedly, the impugned order was passed in a statutory appeal without hearing the appellant. May be that the first respondent has gone into the merits of the case and recorded a finding that the bifurcation is in accordance with law. However, the principles of natural justice require a reasonable opportunity to the appellant to make his submissions before deciding the appeal on merits. Hence, the impugned order cannot be sustained and the matter requires re-consideration.

Accordingly, the impugned order is set aside. The first respondent is directed to consider the matter afresh and to pass appropriate orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

It is made clear that this Court has not expressed any opinion on merits and it is open for both the parties to make their submissions, in which event, the appellate authority shall consider the same independently and pass appropriate orders.

However, to avoid further delay, both the parties are directed to appear before the first respondent on 17-09-2005, either in person or through duly instructed counsel for hearing. In case, the said date is not convenient to the first respondent, a suitable date may be fixed with notice to both the parties so as to dispose of the appeal within four weeks as indicated above.

It is needless to mention that till such time the impugned order of bifurcation shall not be given effect to.

The writ petition is accordingly allowed with above directions. No costs.

G. ROHINI, J

Date: 31st August, 2005

Note: Issue CC in three days

(B/o.)

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